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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/807,946

03/24/2004

Benjamin Korman

1181.002

4070

25215 7590 03/07/2008  
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EXAMINER

BARTOSIK, ANTHONY N

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

03/07/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,946	<b>Applicant(s)</b> KORMAN ET AL.	
	<b>Examiner</b> ANTHONY N. BARTOSIK	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>August 29, 2007</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Objections*

The reasons for objection in the first office action have been address and are hereafter removed.

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**2. Claims 1, 2, 4, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8).**

3. In Re claim 1, Page 6 and 7 of the Hellsten translation teaches the method of making a straw block which would result in a straw block having the same structural characteristics of the straw block of claim 1.

4. In Re claim 2, Page 2 of the Hellsten translation discloses straw stalks that are rice straw stalks and the block is substantially free of any added binding agent.

5. In Re claim 4, Page 6 and 7 of the Hellsten translation teaches first and second walls that are generally planar.

6. In Re claim 5, Page 6 and 7 of the Hellsten translation teaches sidewalls that are generally planar and orthogonal to the first and second walls to form crisp edges.

7. In Re claim 7, Hellsten teaches an added binder with straw blocks. The Examiner is interpreting the added binder to be another piece of straw to the block, and it would be obvious to include additional straw for a more dense block. Another piece of straw would include a binder and since Applicant has not specified that the added binder is a substance other than straw, more straw would meet the limitation.

8. In Re claim 8, Hellsten teaches the use of a moisture inhibitors in contact with straw stalks. The Examiner is interpreting the microwave of Hellsten to be a moisture inhibitor as the use of the microwave would remove the moisture and the waves would contact the straw, meeting the limitations of the claim.

9. In Re claim 9, Column 3 of Hewlett teaches a block of specific dimensions but do not disclose a block with a length of about 24 inches, a width of about 12 inches and a height of about 12 inches and weighs about 40 to 55 lbs. The Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP 2144.04. Here, the fact the blocks are of a specific dimension different than that of Hewlett does not render claim 9

nonobvious. It therefore would have been obvious to one skilled in the art at the time of the invention to make the block larger in order to require fewer blocks to construct a wall.

**10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) in view of Hewlett (US 1,604,097).**

**11.** In Re claim 10, Hellsten teaches the claimed invention except for the use of holes. Figure 5 and Col. 3 Lines 6-15 of Hewlett teach the use of through-holes extending between the one or more sidewalls for allowing concrete to be poured in for further strength. It would have been obvious to one skilled in the art at the time of the invention to include through-holes in Hellsten as taught by Hewlett in order to strengthen the blocks. The language “adapted to receive a rebar, grout tube or both.” is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, it meets the claim. Here, the holes as taught by Hewlett are capable of receiving rebar or grout tubes.

**12. Claims 3, 6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) in view of**

**<http://www.eren.doe.gov/buildings/documents/strawbale.htmls>, (hereinafter “Webpage”).**

13. In Re claim 3, Hellsten teaches the claimed invention except for the specific moisture content of the straw. The section of How to buy a Bale in the Webpage teaches straw stalks having predetermined moisture content of approximately 14% or less as the optimal moisture content in straw bales. It would have been obvious to one skilled in the art at the time of the invention to limit the straw blocks of Hellsten a moisture content of 14% or less as taught by the Webpage in order to make an optimal straw block.

14. In Re claim 6, Hewlett teaches the use of straw blocks but is silent as to the use of restraining devices. It is however well know to use a restraining device adapted to provide additional support to the first and second walls in connection with straw as taught by the Webpage. It therefore would have been obvious to one skilled in the art at the time of the invention to modify the blocks of Hewlett to include a restraining device as taught by the Webpage in order to provide support to the block.

15. In Re claim 11, Page 6 and 7 of the Hellsten translation teaches the method of making a straw block which would result in a straw block having the same characteristics of the straw block of claim 11 with the exception of a restraining device. It is however well know to use a restraining device adapted to provide additional support

to the first and second walls in connection with straw as taught by the Webpage. It therefore would have been obvious to one skilled in the art at the time of the invention to modify the blocks of Hewlett to include a restraining device as taught by the Webpage in order to provide support to the block walls.

16. In Re claim 12, the combination of Hellsten and the Webpage teach the claimed invention except for the specific dimensions. The Federal Circuit has held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP 2144.04. Here, the fact the blocks are of a specific dimension different than that of Hewlett does not render claim 9 nonobvious. It therefore would have been obvious to one skilled in the art at the time of the invention to make the block larger in order to require fewer blocks to construct a wall.

**17. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) and the Webpage and in further view of Hewlett (US 1,604,097) as applied to claims 11 and 12 above.**

18. In Re claim 13, the combination of Hellsten and the Webpage teach the claimed invention except for the providing through holes. Figure 5 and Col. 3 Lines 6-15 of

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Hewlett teach the use of through-holes extending between the one or more sidewalls for allowing concrete to be poured in for further strength. It would have been obvious to one skilled in the art at the time of the invention to include through-holes in Hellsten as taught by Hewlett in order to strengthen the blocks. The language “adapted to receive a rebar, grout tube or both.” is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, it meets the claim. Here, the holes as taught by Hewlett are capable of receiving rebar or grout tubes.

19. In Re claim 14, see reasoning for claims 7 and 8.

**20. Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellsten (SE 9603040-8) in view of the Webpage and Hewlett (US 1,604,097).**

21. In Re claim 21, Page 6 and 7 of the Hellsten translation teaches the method of making a straw block which would result in a straw block having the same characteristics of the straw block of claim 21 with the exception of a restraining device and through-holes. It is however well known to use a restraining device adapted to provide additional support to the first and second walls in connection with straw as taught by the Webpage. It therefore would have been obvious to one skilled in the art at



the time of the invention to modify the blocks of Hewlett to include a restraining device as taught by the Webpage in order to provide support to the block walls.

Figure 5 and Col. 3 Lines 6-15 of Hewlett teach the use of through-holes extending between the one or more sidewalls for allowing concrete to be poured in for further strength. It would have been obvious to one skilled in the art at the time of the invention to include through-holes in Hellsten as taught by Hewlett in order to strengthen the blocks.

22. In Re claim 22, Hellsten teaches side walls that define rigid planar smooth walls.

23. In Re claim 23, Hellsten teaches the entire wall being rigid planar smooth walls.

24. In Re claim 24, Figure 5 of Hewlett teaches one or more through-holes extending through the block that defines cylindrical rigid planar smooth walls. The Examiner notes that the language "smooth walls" is a relative term and does not offer a structural limitation to the claim. Furthermore, the compressing of the block as taught by Hellsten would result in relatively smooth walls.

25. In Re claims 25 and 26, the method of Hellsten teaches the method of forming a block that has a center portion formed of rigid material that is straw or the entire block being formed of rigid straw stalks depending upon how long the blocks are heated. The disclosed method would result in the claimed structure of the block.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/

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Supervisory Patent Examiner, Art Unit 3635

/A. N. B./

Examiner, Art Unit 3635\*